

JOSIAH KING.

JUNE 10, 1842.

Read, and laid upon the table.

Mr. HALL, from the Committee on Revolutionary Claims, submitted the following

REPORT :

The Committee on Revolutionary Claims, to which was referred the petition of Josiah King, submit the following report :

The petitioner represents that, at the commencement of the revolutionary war, his father resided in the province of Nova Scotia ; and that, being determined to adventure his fortune in the American cause, he precipitately embarked his family on board a small sloop, late in the fall of 1774, and, after a boisterous passage, arrived at Newport, Rhode Island ; that, previous to the battle of Bunker Hill, his father and himself both entered the service of their country—his father as a captain in the 9th Massachusetts regiment, and himself as a private, he being then but fourteen years of age—and that the petitioner served through the whole war ; that, at the time of his father's leaving Nova Scotia, he was the owner of a valuable tract of land, which he afterwards conveyed to the petitioner ; but that, by reason of their leaving Nova Scotia and engaging in the American cause, the title to their said land has become invalid, and the land has been lost to them. The petitioner further alleges, that the United States made an early reservation of sundry townships of land, to remunerate the Canada and Nova Scotia refugees, but that neither his father nor himself have been benefited thereby ; wherefore, he prays Congress to order that he may be benefited by such reservation of land, according to the original intent of Congress.

There is no satisfactory evidence produced of the time when the petitioner and his father left the province of Nova Scotia, or of the manner and motive of their leaving it ; but it appears, from the rolls of the army in the Pension Office, that the father was a captain in the eight months' service, in the 9th Massachusetts regiment, from the 24th of April, 1775, and that the petitioner was a private in his company from the 20th of June. It is also probable that they performed other service. A deed is produced, from Josiah King to Josiah King, jr., of certain lands in Nova Scotia, dated in 1794 ; and sundry certificates are filed, purporting to be certificates given in 1837, by individuals residing in Nova Scotia, saying, in substance, that certain lands, of the value of from \$1,800 to \$2,000, which formerly belonged to Josiah King, are in the possession of other individuals not claiming under him, in which the opinion is expressed that

said King had lost his title by reason of his having engaged in the American service during the Revolution; but there is no evidence that the said lands were confiscated, or otherwise claimed by the British authorities.

On the 13th of April, 1785, Congress, on the petition of Jonathan Eddy and others, refugees from Nova Scotia, resolved "that, whenever Congress can consistently make grants of land, they will reward in this way, as far as may be consistent, such refugees from Nova Scotia as may be disposed to live in the Western country." On the 23d of April, 1783, a similar resolution had been passed, in regard to the claims of refugees from Canada.

By the ordinance of Congress "for ascertaining the mode of disposing of lands in the Western territory," three townships adjoining Lake Erie were reserved from sale, to be thereafter disposed of by Congress, for the use of the Canadian and Nova Scotia refugees.

The language of these provisions is altogether too indefinite to authorize any specific allowances to any one, and it is evident that Congress contemplated that the description of persons who should be entitled to land should be thereafter ascertained and declared by law.

Accordingly, on the 7th of April, 1798, Congress passed an act for carrying into effect the foregoing resolutions. The act directed that notice should be given to claimants of land under those resolutions, by publications in one or more of the public papers in Vermont, Massachusetts, New York, and New Hampshire, to transmit to the War Office, within two years, a just and true account of their claims. The claims were to be examined and adjusted by the Secretaries of the Treasury and War and the Comptroller of the Treasury, who were to determine upon the quantity of land to which each was to be entitled, according to certain rules and principles specified in the act. All claims not presented within two years were to be forever barred.

In pursuance of this act, sundry claims were presented, and on the 9th of May, 1800, the Secretaries and Comptroller made their reports, specifying the names and quantity of land to which each should be entitled; and on the 18th of February, 1801, Congress passed another act, in conformity with said reports, declaring the manner in which the claimants should receive patents for their lands. Under the provisions of this act, it is presumed all the claims which had been thus allowed were satisfied.

On the 24th of February, 1810, another act similar to that of April 7, 1798, was passed, authorizing the further presentment and examination of claims under the before-mentioned resolutions for two years longer, and providing that all claims not then exhibited should be barred. The Secretaries and Comptroller having made their reports, the same were carried into effect, and satisfaction of the claims allowed by them was made, in pursuance of an act passed April 23, 1812. This appears to have been all the general legislation had by Congress on the subject of these claims.

No claim appears to have been allowed to Josiah King, under either of the foregoing acts; and, from the destruction of the principal portion of the papers which were before the said commissioners, it cannot now be ascertained whether he presented a claim or not. From the fact that the petitioner refers in his petition to this provision of land for Nova Scotia refugees, as well as from the general notice which appears to have been given to claimants, it is not unreasonable to suppose that he was aware of the provision at the time, and that his claim was either rejected by the com-

missioners, or left unpresented, from the apprehension that it was not of a character that would be allowed.

The act of April 7, 1798, and also that of February 24, 1810, prescribed the qualifications of the persons who should be entitled to allowances. They were to be such persons as were "residents in one of the provinces aforesaid prior to the 4th of July, 1776, and who abandoned their settlements in consequence of having given aid to the United Colonies or States in the revolutionary war against Great Britain, or with intention to give such aid."

It is very manifest that the proof produced by the claimant does not bring him within the provisions of these acts. In the first place, there is no proof that he "abandoned his settlement" in Nova Scotia. The land which he claims to have lost appears to have been in a wild and uncultivated state at the time of his leaving the province. There is no evidence that it was ever settled upon by him. For aught that appears, he may have sold his "settlement" in Nova Scotia for a valuable consideration; in which case he could not be said to have "abandoned" it, in the sense in which that term is used in the acts. The fact that he left Nova Scotia in the fall of 1774, before the commencement of hostilities, and when there could have been no impediment to his making such sale, renders the supposition extremely probable. At any rate, there is an entire want of evidence to show that his "settlement" was abandoned and lost by his leaving the province. Besides, the purpose for which he left Nova Scotia, which is an important ingredient of a valid claim under these acts, is not shown. That he did not leave Nova Scotia "in consequence of having given aid to the United States in the revolutionary war against Great Britain" is apparent from the fact that he removed from that province several months before the war commenced. It is also difficult to conceive how he can be said to have left the province "with intention to give such aid," before it could be known there would be any such war. It seems, therefore, very clear that the case of the petitioner was not embraced by the acts of 1798 and 1810. Nor is it conceived that it would come within the equity of the promise of Congress contained in the resolution of April 13, 1785. That resolution engaged lands to certain *refugees* from Nova Scotia. The word *refugee*, when applied to persons of a political character, is defined by Webster to be "one who, in times of persecution or political commotion, flees to a foreign country for safety." This definition, which is doubtless the correct one, does not seem to apply to the case of the petitioner. He does not appear to have fled for safety to the United States. So far as is known, there was no persecution or political commotion in Nova Scotia in 1774; there was, therefore, no danger for the petitioner to flee from. Besides, if war was then apprehended between the United Colonies and Great Britain, he would have fled from a place of comparative safety to one of danger and peril, and could not, for this reason, claim the character of a refugee. Upon his own showing, his case is assimilated to those of citizens of foreign Governments who left their country for the purpose of embarking in the struggle of the colonies against the mother country; and, however patriotic and praiseworthy his conduct may have been, it is not perceived how he could come under the denomination of a refugee, and in that character claim the benefit of the resolution of Congress.

It appears that the petitioner and his father became citizens of the United Colonies before the commencement of hostilities with the mother coun-

try; and if, by the part they took in the contest which afterwards followed, they lost their right to lands in Nova Scotia, they must be considered as standing in the situation of any other citizens of the United Colonies who may have owned lands in any of the provinces that continued their allegiance to Great Britain, and thereby forfeited them. For the military services they performed they can also claim the same compensation, and no other, to which other citizens were entitled.

In wars, and especially those of a revolutionary character, the services and losses of individuals are often unequal, and it is out of the power of a Government to equalise them. The risks, both of person and property, which the petitioner and his father run, were such as they patriotically chose to encounter for the great prize of liberty and self-government, which, in common with their associates, they have acquired for themselves and their posterity. As they shared in the dangers, so they share in the reward, which must be their principal remuneration for their sufferings and losses.

It appears that the petitioner has been in the enjoyment of a pension from the Government since 1818, to which he was doubtless well entitled.

The committee, being of opinion that the petitioner is not entitled to the benefit of any of the resolutions or laws of Congress as a refugee, recommend that the prayer of the petition be rejected.